

(Richardson Task Force
Bill)

94TH CONGRESS
2D SESSION

S. 3741

IN THE SENATE OF THE UNITED STATES

AUGUST 6, 1976

Mr. MAGNUSON (for himself and Mr. PEARSON) (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To require the disclosure of payments to foreign officials, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Foreign Payments Dis-
4 closure Act".

DEFINITIONS

6 SEC. 2. For purposes of this Act—

7 (a) "person" means—

8 (1) an individual who is a citizen of the United
9 States;

10 (2) an individual who has been lawfully admit-
11 ted for permanent residence as described in section

1 101 (a) (20) of the Immigration and Nationality
2 Act, as amended (8 U.S.C. 1101 (a) (20)) ; or
3 (3) a legal entity, other than a noncommercial
4 government entity, organized under the laws of the
5 United States or a State or political subdivision
6 thereof;

7 (b) "anything of value" means any direct or in-
8 direct gain or advantage, or anything that might reason-
9 ably be regarded by the beneficiary as a direct or
10 indirect gain or advantage, including a direct or indirect
11 gain or advantage to any other individual or entity;

12 (c) "foreign affiliate" means a legal entity organized
13 under the laws of a foreign country, or political sub-
14 division thereof, at least 50 per centum of which is
15 beneficially owned directly or indirectly by a person or
16 persons subject to the provisions of this Act;

17 (d) "Secretary", unless otherwise specified, means
18 the Secretary of Commerce;

19 (e) "foreign public official" means—

20 (1) an officer or employee, whether elected or
21 appointed, of a foreign government; or

22 (2) an individual acting for or on behalf of
23 a foreign government;

1 and includes an individual who has been nominated or
2 appointed to be a foreign public official or who has been
3 officially informed that he will be so nominated or
4 appointed;

5 (f) "official action" means a decision, opinion,
6 recommendation, judgment, vote, or other conduct in-
7 volving an exercise of discretion by a foreign public
8 official in the course of his employment;

9 (g) "State" means a State of the United States, the
10 District of Columbia, Puerto Rico, or any territory or
11 possession of the United States; and

12 (h) "foreign government" means—

13 (1) the government of a foreign country, ir-
14 respective of recognition by the United States;

15 (2) a department, agency, or branch of a
16 foreign government;

17 (3) a corporation or other legal entity estab-
18 lished or owned by, and subject to control by, a
19 foreign government;

20 (4) a political subdivision of a foreign govern-
21 ment, or a department, agency, or branch of the
22 political subdivision; or

23 (5) a public international organization.

1 REPORTING REQUIREMENTS

2 SEC. 3. A person shall report to the Secretary, in ac-
3 cordance with regulations promulgated by the Secretary,
4 payments hereafter made on behalf of the person or the
5 person's foreign affiliate to any other individual or entity
6 in connection with an official action, or sale to or contract
7 with a foreign government, for the commercial benefit of
8 the person or his foreign affiliate.

9 RECORDKEEPING REQUIREMENTS

10 SEC. 4. In order to insure that a person who is required
11 to report under section 3 of this Act has sufficient informa-
12 tion in his possession to report accurately, the Secretary may
13 promulgate rules and regulations requiring such person to
14 keep such records, in the form and manner prescribed by
15 the Secretary, as he deems necessary to carry out the pur-
16 poses of this Act. In devising the recordkeeping require-
17 ments, the Secretary shall consult with other Federal agen-
18 cies to eliminate unnecessary duplication in records required
19 by the agencies. The agencies are authorized, where ap-
20 propriate, to combine in a single form the records required
21 under this Act and under any other Act.

22 ENFORCEMENT; COMPLIANCE WITH REQUIREMENTS

23 SEC. 5. To the extent necessary or appropriate to the
24 enforcement of this Act, the Secretary, and officers and em-
25 ployees of the Department of Commerce specifically desig-

1 nated by the Secretary, may make such investigations and
2 obtain such information from, make such inspections of the
3 books, records, and other writings of, and take the sworn
4 testimony of, any individual or entity. In addition, such offi-
5 cers or employees may administer oaths or affirmations, and
6 may by subpoena require any individual or entity to appear
7 and testify or to appear and produce books, records, and
8 other writings, or both, and in the case of contumacy by,
9 or refusal to obey a subpoena issued to, any such individual
10 or entity, the district court of the United States for any dis-
11 trict in which such individual or entity is found or resides
12 or transacts business, upon application by the Attorney
13 General, and after notice to any such individual or entity
14 and hearing, shall have jurisdiction to issue an order requir-
15 ing such individual or entity to appear and give testimony,
16 or to appear and produce books, records, and other writings,
17 or both, and any failure to obey such order of the court may
18 be punished by such court as a contempt thereof.

19 CIVIL REMEDIES

20 SEC. 6. (a) CIVIL PENALTIES.—A person who fails to
21 file a report required under section 3 of this Act, or who
22 fails to maintain the records required under section 4, or
23 who files a report under section 3 but negligently omits in-
24 formation required to be reported under section 3 or negli-

1 gently states false information required to be reported under
2 section 3, shall be subject to a civil penalty of not more than
3 \$100,000.

4 (b) INJUNCTION.—Upon evidence satisfactory to the
5 Attorney General that a person is engaged in an act or prac-
6 tice that constitutes a violation of this Act, the Attorney
7 General may bring an action in a district court of the United
8 States to enjoin such an act or practice, and, upon a proper
9 showing, a permanent or temporary injunction or restrain-
10 ing order shall be granted by the court together with such
11 other equitable relief as may be appropriate.

12 CRIMINAL PENALTIES

13 SEC. 7. (a) FAILURE TO FILE.—A person who know-
14 ingly—

15 (1) fails to file a report required under section 3
16 of this Act;

17 (2) fails to maintain records required under section
18 4 of this Act; or

19 (3) omits required information from, or falsifies in-
20 formation in, records kept under section 4 of this Act;
21 shall be fined not more than \$10,000 or imprisoned for not
22 more than one year, or both, except that a legal entity shall
23 be fined not more than \$100,000.

24 (b) KNOWING FALSIFICATION.—A person who files a
25 report required by this Act which he knows or should know

1 contains a false statement, or which he knows or should know
2 omits required information, shall be fined not more than
3 \$100,000 and imprisoned not more than three years, except
4 that a legal entity shall be fined not more than \$500,000.

5 DISSEMINATION OF REPORTS

6 SEC. 8. (a) DISSEMINATION WITHIN THE UNITED
7 STATES.—The Secretary shall, upon receipt of a report, dis-
8 seminate copies of the report to the Department of Justice,
9 the Department of State, and the Internal Revenue Service.
10 If the person who filed the report is subject to the jurisdic-
11 tion of the Securities and Exchange Commission, the Secre-
12 tary shall also transmit a copy of the report to the Securities
13 and Exchange Commission. Until the report is released to
14 the public, it shall be maintained in accordance with section
15 1905 of title 18, United States Code. The report shall be
16 transmitted, upon request, subject to an appropriate arrange-
17 ment to assure its confidentiality, to committees of the Con-
18 gress having legislative jurisdiction over the subject matter
19 of the report. A report shall be made public one year after
20 receipt in accordance with rules and regulations promulgated
21 by the Secretary, unless the Secretary of State makes a
22 specific determination in writing that foreign policy interests
23 dictate against disclosure, or unless the Attorney General
24 makes a specific determination in writing that the status of
25 an ongoing investigation or prosecution dictates against

1 public disclosure through other than conventional judicial
2 processes.

3 (b) DISSEMINATION TO A FOREIGN GOVERNMENT.—

4 The Attorney General, with the concurrence of the Secretary
5 of State, may furnish any information contained in a report
6 made under this Act to the appropriate law enforcement
7 authorities of the foreign government concerned in accord-
8 ance with applicable procedures and international agree-
9 ments. The Secretary of State, with the concurrence of the
10 Attorney General, may provide any such information to the
11 foreign government concerned.

12 REGULATIONS

13 SEC. 9. (a) PROMULGATION OF REGULATIONS.—The
14 Secretary shall promulgate such regulations as are necessary
15 to carry out the purposes of this Act. The regulations shall
16 include—

17 (1) a requirement that the report include the name
18 of every recipient who receives anything of value over
19 a specified amount and the amount received by each
20 such recipient;

21 (2) a requirement that the report include informa-
22 tion concerning multiple payments with respect to a
23 single transaction which total over a specified amount;
24 and

25 (3) a definition of certain types of payments which

1 are not required to be reported because they are regular
2 business payments not inconsistent with the purposes of
3 this Act, or are bona fide payments to a foreign gov-
4 ernment, such as taxes or fees paid pursuant to duly
5 promulgated laws, regulations, decrees, or other legal
6 action.

7 (b) CONSULTATION WITH OTHER AGENCIES.—In
8 devising the reporting regulations, the Secretary shall con-
9 sult with other Federal agencies to eliminate unnecessary
10 duplication in reports required by the agencies. The agencies
11 are authorized, where appropriate, to combine in a single
12 form the reports required under this Act and under any
13 other Act.

14 CONFORMING AMENDMENT

15 SEC. 10. The provisions of this Act, other than section
16 9 (b), shall not apply to payments made in connection with
17 (a) sales of defense articles or defense services under sec-
18 tion 22 of the Arms Export Control Act or (b) commercial
19 sales of defense articles or defense services licensed or ap-
20 proved under section 38 of the Arms Export Control Act.

21 PROVISIONS OF LAW NOT AFFECTED

22 SEC. 11. (a) RIGHTS AND DUTIES UNDER CERTAIN
23 OTHER LAWS UNAFFECTED.—Nothing in this Act shall be
24 construed as affecting the rights or duties arising under the
25 Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securi-

1 ties Exchange Act of 1934 (15 U.S.C. 78a et seq.), the
2 Public Utilities Holding Company Act of 1935 (15 U.S.C.
3 79a et seq.), the Trust Indenture Act of 1939 (15 U.S.C.
4 77aaa), the Investment Company Act of 1940 (15 U.S.C.
5 80a-1 et seq.), and the Investment Advisers Act of 1940
6 (15 U.S.C. 80b-1 et seq.), and any subsequent amendments
7 thereto. Persons subject to this Act shall be required to
8 make such public disclosure of the matters described in sec-
9 tion 3 of this Act as may be otherwise required under the
10 statutes listed above. Nothing in this Act shall preclude
11 persons reporting pursuant to the provisions of this Act from
12 making public disclosure of any payment described in
13 section 3.

14 (b) **AUTHORITY OF SECURITIES AND EXCHANGE**
15 **COMMISSION.**—Nothing in this Act shall be construed as
16 affecting or conditioning the authority of the Securities and
17 Exchange Commission to enforce the statutes listed in sub-
18 section (a) or to investigate violations thereof. The Com-
19 mission shall have the authority to premise such enforcement
20 or investigation on information received pursuant to section
21 8 (a) of this Act.

22 **RIGHTS AND REMEDIES PRESERVED**

23 **SEC. 12.** The rights and remedies provided by this title
24 shall be in addition to, and shall not be in derogation of, any
25 and all other rights and remedies that may exist at law or
26 in equity.

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